

Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036



CASE NO. 82-WPA-6

2/ Section 654.407(c)(1) provides that: "The following space requirements shall be provided: (1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant."

(1) Show that the variance is necessary to obtain a beneficial use of an existing facility and to prevent a practical difficulty or unnecessary hardship; and

(2) set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standards from which the employer seeks a variance (§654.402(a)).

The plaintiff in this matter seeks an exemption from the provisions of §654.407(c)(1) for housing which presently fails to comply with the housing standards in the regulation because each of the four identical rooms in question has only 96 square feet as opposed to the 100 square feet required by the regulation. The plaintiff states that the rooms in question are well lit and ventilated and correction would be difficult and costly.

The record, however, does not contain any facts to support the plaintiff's assertion that correction would be costly and difficult. Moreover, the plaintiff supplies no facts or details to support his contention that the rooms are well lit and ventilated.

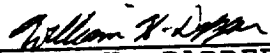
The regulation requires the plaintiff to show that the variance is necessary "to prevent a practical difficulty or unnecessary hardship." The plaintiff has not submitted facts which substantiate the claim that compliance with the regulation would be unduly burdensome or impracticable.

Although the variances requested herein do not represent a substantial departure from the requirements of the regulations, the fact remains that the plaintiff has the burden of proof and that burden cannot be satisfied by conclusory and factually unsupported recitals.

Thus, the plaintiff has the burden of proving the essential elements of its case and an applicant for a waiver from a regulation "has the burden of convincing the agency that it should depart from the general rules and of demonstrating to the reviewing court that the agency's reasons for refusing to do so were so insubstantial as to amount to an abuse of discretion." Ashland Exploration v. Federal Energy Regulatory Commission, 631 F.2d 817 (D.C. Cir. 1980)

As detailed above, the plaintiff has not sustained his burden of proof and accordingly is not entitled to prevail, notwithstanding the fact that the Regional Administrator's denial was in conclusory form and the defendant did not make a separate evidentiary presentation.

Accordingly, the Regional Administrator's decision is affirmed and this appeal is hereby dismissed.



WILLIAM H. DAPPER
Administrative Law Judge

Dated: **DEC 6 1982**

Washington, D.C.

WHD/paw

SERVICE SHEET

CASE NAME: Indian Ladder Farms

CASE NO.: 82-WPA-6

TITLE OF DOCUMENT: DECISION AND ORDER

A copy of the above document was sent to the following parties
on DEC 6 1982.

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